

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:6

PLR-100985-09

Date:

July 02, 2009

TY:

Legend

Taxpayer

LLC =

Date 1 =

Year 1 =

Law Firm A =

Law Firm B =

Individual A =

Individual B =

Dear :

This responds to a letter dated December 23, 2008, submitted by Law Firm B (Taxpayer's authorized representative) requesting that the Internal Revenue Service (Service) grant Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to file a Form 4876-A (Election to be treated as an Interest Charge DISC) for Taxpayer's first taxable year.

The extension granted by this letter ruling is based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Facts

Taxpayer is a domestic corporation that was incorporated on Date 1, and is an affiliate of LLC, a limited liability company that elects to be taxed as a partnership. Law Firm A recommended to Individual A, President of Taxpayer, that Taxpayer organize itself as an interest-charge domestic international sales corporation (IC-DISC) pursuant to sections 991 through 997. Individual A assigned Individual B, the Controller of both Taxpayer and LLC, the task of preparing and filing the IC-DISC election. Individual B prepared Form 4876-A and obtained shareholder approval in a timely manner, however the Form 4876-A was not timely filed within 90 days of Date 1.

In late Year 1 (the year of Taxpayer's incorporation), Individual B became aware of the failure to file Form 4876-A and notified Individual A. Individual A consulted Law Firm A about the failure to file Form 4876-A and was advised to submit a request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file the IC-DISC election effective as of Date 1.

The period of limitations on assessment under Section 6501(a) has not expired for the taxable year for which the election is being made nor for any taxable years that would have been affected by the election had Taxpayer made a timely election. Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

Law and Analysis

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treas. Reg. § 1.992-2(a)(1)(i) provides, in part, that the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

Taxpayer requests an extension of time to make a timely election described in Temp. Treas. Reg. § 1.921-1T(b)(1) for its first taxable year. This election is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A required by Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year beginning Date 1.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John E. Hinding
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)